UNITED STATES STEEL CORPORATION

COMMENTS ON PRE-PUBLIC NOTICE DRAFT NPDES PERMIT NO. MN0057207

MINNESOTA ORE OPERATIONS – MINNTAC TAILINGS BASIN

Comments on Factual Errors

1. **Issue: A sulfate standard of 10 mg/L should not be applied to a waterbody that has not been formally designated as waters used for the production of wild rice.**

   Reference: Draft Permit, Page 15;
   Draft Fact Sheet, Page 30

   U. S. Steel Position:

   U. S. Steel believes it is an error that a 10 mg/L sulfate standard has been applied at SW007, as Admiral Lake or Sand River upstream of the Twin Lakes has not been formally designated as a 'waters used for the production of wild rice,' nor has a Draft Staff Recommendation been made for these waterbodies related to wild rice, and the waterbodies are not mentioned as part of the proposed monitoring on Page 30 of the draft fact sheet.

   Requested Change:

   U. S. Steel requests that the requirements that it comply with a 10 mg/L standard for sulfate at SW007 be removed from the permit.

2. **Issue: Chapter 5, Section 2 incorrectly refers to 'Mobile and Rail Equipment Service Areas'.**

   Reference: Draft Permit, Page 32

   U. S. Steel Position:

   Minntac does not have or operate any rail equipment service areas on property.

   Minntac does have a mobile equipment service area, but it is located in the geographic area that would be covered in the mine NPDES/SDS permit.

   Neither Mobile Equipment nor Rail service areas are located near the tailings basin.

   Requested Change:

   U. S. Steel requests that all references to mobile equipment and rail services be removed from Chapter 5 of the permit, sections 2.1–a, b, c, d and h.

3. **Issue: WET testing requirements at SW005 are unclear.**

   Reference: Draft Permit, Pages 14-15, 20–21, 33

   U. S. Steel Position:

   Chapter 7, Section 1.2 states WET testing is required at SW005; however, no WET testing requirements are contained in Limits and Monitoring Requirements section on Pages 14-15 and Pages 20-21.

   Requested Change:

   U. S. Steel requests that testing requirements be consistent throughout the permit and fact sheet.

4. **Issue: Chronic toxicity testing for SD001 is listed as both quarterly and yearly.**

   Reference: Draft Permit, Pages 12, 33

   U. S. Steel Position:

   The Limits and Monitoring Requirements should match WET narrative language in Chapter 7, Section 1.2.

   Requested Change:

   U. S. Steel requests that the chronic toxicity testing for SD001 be footnoted to reflect the requirements in Chapter 7: Quarterly the first year and annually thereafter.

5. **Issue: Buckeye and Canisteo tailings basin references are incorrect.**

   Reference: Draft Permit, Page 41, Chapter 9, Section 2.4(d)

   U. S. Steel Position:

   In Chapter 9, Section 2.4(d), an incorrect reference is made to Buckeye and Canisteo tailings basin in the permit. Reference should instead be made to the Minntac tailings basin.

   Requested Change:

   "USGS topographic map of location of well in relation to the ~~Buckeye and Canisteo~~ Minntac tailings basin and property boundary."

6. **Issue: Missing Reference.**

   Reference: Draft Permit, Page 24, Chapter 2.1.2

U. S. Steel Position:

A reference is missing in Chapter 2.1.2 of the Draft Permit.

Requested Change:

Replace "XX" as appropriate in the following sentence: "The requirements in conditions ~~XX~~ through ~~XX~~ cease to apply if the Permittee achieves compliance with applicable water quality-based final compliance limits, and receives written confirmation of compliance from MPCA."

7. **Issue: Description of existing permit limits is incorrect.**

Reference: Fact Sheet, Page 23

U. S. Steel Position:

Amine testing is not required at SD001 and SD002 in the existing Permit as listed in the section "Existing Permit Effluent Limits."

Requested Change:

Remove "amines" as a parameter required under stations SD001 and SD002.

8. **Issue: Reference to Technology Based Effluent Limits for TSS is incorrect.**

Reference: Fact Sheet, Page 24

U. S. Steel Position:

The Fact Sheet states "40 CFR Subpart A – Iron Ore Subcategory 440.10 establishes TBELs for [...] TSS (30 mg/L daily max. / 20 mg/L mo. Avg.) [...]. These values were instituted as compliance limits at SD001 and SD002;" however, existing TSS limits at SD001 and SD002 are 60 mg/L daily max. / 30 mg/L mo. Avg.

Requested Change:

Remove "These values were instituted as compliance limits at SD001 and SD002," as this statement is inaccurate.

9. **Issue: Monitoring and compliance requirements at SW004 are inconsistent.**

Reference: Draft Permit, Pages 15, 20;
Fact Sheet, Page 15

U. S. Steel Position:

The Fact Sheet states, "Concentrations of key parameters at the CH65 location within the trout stream reach are fairly consistently about one-half of those observed at the CR668 sampling point during same-day sampling events; thus, establishing permit compliance limits at the CR668 sampling point to protect the downstream trout stream use of the Dark River is reasonable and defensible;" however, the Draft Permit includes monitoring requirements and compliance limits at SW004 (Dark River at CH65).

Requested Change:

Remove all references to, monitoring requirements, and compliance limits at SW004.

10. Issue: Permit language is unnecessarily confusing.

Reference: Draft Permit, Page 28;
Fact Sheet, Page 35

U. S. Steel Position:

Chapter 2, Section 3.2's requirement that "Biannually after the chosen remedy is operational, the Permittee shall submit to the MPCA a Semi-annual Compliance Schedule Progress Report" is unnecessary confusing and all references stating this requirement, including on Page 35 of the Fact Sheet, should be revised to make permit requirements more clear.

Requested Change:

Change all instances of this language to: "~~Biannually~~ After the chosen remedy is operational, the Permittee shall submit to the MPCA a Semi-annual Compliance Schedule Progress Report."

11. Issue: Fact Sheet is overly detailed in some sections.

Reference: Fact Sheet, generally

U. S. Steel Position:

Fact Sheet detail is unnecessary.

Requested Change:

Condense sections of the Fact Sheet, including the "Recent Compliance History" description and "Use Classification" descriptions to make the Fact Sheet more pertinent to Permit Development.

12. Issue: Typographic errors.

Reference: Draft Permit, Pages 25, 27

U. S. Steel Position:

U. S. Steel recommends the following typographic errors be corrected In the Draft Permit and Fact Sheet.

Requested Change:

1. Chapter 2.1.6(A)(iii) – "permittee's"

2. Chapter 2.1.17: "Upon submittal of the Final Compliance Plan and schedule, the Permittee shall initiate the plan of action identified in the Plan in accordance with the schedule contained therein. Written notification shall be submitted to the MPCA within 14 days of implementation of the Work Plan. ~~Submit notice to proceed by 14 days after submittal of the plan~~."

13. Issue: Facility description corrections.

Reference: Draft Permit, Pages 5–6

U. S. Steel Position:

U. S. Steel recommends revisions to the Facility Description contained in the Draft Permit.

Requested Change:

"An average of 21 million long tons of dry fine tailings and 14 million long tons of dry coarse tailings are disposed of each year in the tailings basin. The coarse tailings are generated from the classifier, following the first stage of milling and magnetic separation. The fine tailings are generated from the crusher thickener overflow and the tailings thickener underflow. The fine tailings slurry and concentrator process water is directed by gravity flow through pipes from the Step I, II, and III thickeners to a fine tailings pump house, which lifts the slurry for disposal through a series of open ditches to the Minntac tailings basin. The flow from the flotation process is restricted to Step I thickeners, but is mixed with discharge from Steps II and III in the pump house. ~~The fine tailings slurry and flotation wastewater is routed to the tailings basin via one of two flow routes (east or west). Internal waste stream WS006 is representative of the fine tailings slurry wastewater flow to the east while WS007 is representative of the wastewater flow to the west.~~ The basin is segmented into several cells, and the fine tailings spigot point is periodically moved from one cell to another. A permanent pumping station located within the basin returns water to the plant site reservoir. The station is located on the east side of Cell 1 (SE ¼, Section 15). Calcium chloride is occasionally used as a chemical dust

suppressant on the basin and haul roads in the facility. Some coarse tailings are used for sanding on roads in the facility during the winter, and others are sold as aggregate product."

"The various basin cells are separated by dikes, each constructed of a single berm of coarse tailings placed by truck and various pieces of auxiliary equipment. Most of the perimeter dam for the tailings basin ~~is~~was constructed by spigotting a fine tailings slurry into the core between parallel inner and outer coarse tailings dikes; that part of the perimeter dam on the southwest side of the basin ~~is~~was constructed in the same manner as the interior basin dikes. The coarse tailings dikes ~~are~~ were constructed by truck in ten foot lifts. The perimeter dam spigot ~~are~~ were lines were located on the dry side (outer) of the core; this ~~creates~~ created a surface slope from the dry side down to the wet (inner) side, thus causing the water from the slurry to pond on the wet side of the core and seep through the wet side dike to the retained water within the disposal facility. Peat was removed from the original ground area to be occupied by the perimeter dam, and a ten foot deep keyway was dug in the glacial drift prior to spigotting fine tailings into the core portion of this area."

"A demolition debris landfill (Solid Waste Permit SW-240) is located on the southeast corner of Cell A2, but was closed per MPCA guidelines in 2013. The abandoned Minntac dump site (Agency Landfill Inventory Number SL-183) is located in the southwest corner of Cell 1 (SW ¼, SE ¼, Section 21 and NW ¼, NE ¼, Section 28). Paper, lunch wastes, wood scrapes, scrap metal, mill grease, and waste oil were disposed of at this dump during its period of operation."

~~"Due to safety issues at the current internal monitoring station, WS001, the minor permit modification in 2010 also included the relocation of monitoring station WS001 to two separate monitoring stations, now identified as WS006 and WS007. These stations are representative of the entire fine tailings slurry flow from the Concentrator which also includes wastewater flow from the flotation process. The fine tailings slurry is directed through one of two routes at any given time, either to the east portion of the tailings basin past WS006 or to the west portion of the tailings basin past WS007, for uniform tailings distribution and disposal. These locations were used to monitor for the presence of free amine in the fine tailings slurry flow and any associated toxicity. Since monitoring results have not indicated the presence of amines or shown toxicity, and since WET testing is required at the discharge location (SD001) and in surface water under the reissued permit, toxicity monitoring at WS006 and WS007 will no longer be required."~~

14. Issue: PLS locations in the Summary of Stations need to be corrected.

Reference: Draft Permit, Pages 9–10

U. S. Steel Position:

U. S. Steel recommends the following be corrected in the Summary of Stations.

Requested Change:

GW004 = ~~SW~~NW Quarter of the ~~NW~~ SW Quarter of Section 4, Township 59 North, Range 18 West
GW006 = ~~NW~~ NE Quarter of the ~~SE~~ NW Quarter of Section 7, Township 59 North, Range 18 West
GW007 = ~~NW~~ NE Quarter of the ~~NE~~ NW Quarter of Section 18, Township 59 North, Range 18 West
GW008 = NW Quarter of the ~~SW~~ NW Quarter of Section 19, Township 59 North, Range 18 West
GW009 = ~~NE~~ SW Quarter of the ~~SE~~ NW Quarter of Section 11 ~~10~~, Township 59 North, Range 19 West
GW010 = NW Quarter of the ~~SE~~ NW Quarter of Section 23, Township 59 North, Range 18 West
~~WS006 = Concentrator Fine Tailings Slurry Discharge – Eastern Tailings Basin Disposal~~
~~WS007 = Concentrator Fine Tailings Slurry Discharge – Western Tailings Basin Disposal~~
WS008 = SW Quarter of the NE Quarter of Section 28, Township 59 North, Range 18 West

15. Issue: Minntac does not currently land apply biosolids or semisolids from operations.

Reference: Draft Permit, Page 28, Chapter 3, Section 1.2

U. S. Steel Position:

Because Minntac does not currently land apply biosolids or semisolids from operations, the permit language should be revised to require operators with a Type IV certification only if applicable.

Requested Change:

If applicable, ~~T~~The Permittee shall provide the appropriate number of operators with a Type IV certification to be responsible for the land application of biosolids or semisolids from commercial or industrial operations.

16. Issue: Sampling Location descriptions are not accurate.

Reference: Draft Permit, page 43, Chapter 11, Section 4

U. S. Steel Position:

Language in Sections 4.2 and 4.3 in Chapter 11 is not accurate and needs to be revised.

Requested Change:

4.2. Samples for Station SW003 shall be taken at the ~~culvert inlet~~ bridge where the Dark River crosses County Road ~~Highway~~ 668, which is located in the SE ¼ of the SE ¼ of the NE ¼ of Section 3, Township 59 N, Range 19 W.

4.3 Samples for Station SW004 shall be taken at the ~~culvert inlet~~ bridge where the Dark River crosses County Road ~~Highway~~ 65, which is located in the NE ¼ of Section 30, Township 60 N, Range 19 W.

Specific Substantive Comments

17. Issue: Proposed monitoring point SW007 (Admiral Lake) is arbitrary and capricious, not appropriate, and impractical.

Reference: Draft Permit, Pages 9, 14, 15, 20, 21;
Minn R. 7001.1060;
Minn. R. 7001.1080 Subp. 5;
EPA Permit Writers' Manual, Section 8.1.2

U. S. Steel Position:

Minn. R. 7001.1080 Subp. 5 states that "the commissioner shall establish appropriate monitoring and reporting of monitoring requirements to ensure compliance with permit limitations." Proposed monitoring at SW007 (Admiral Lake) is arbitrary and capricious, not appropriate, and impractical for the following reasons:

1. SW007 and SW005 compliance monitoring points are substantially identical and characterize the same discharge. If the effluent from two outfalls is substantially identical, MPCA shall allow the discharger to sample from one of them instead of both. *See* Minn R. 7001.1060. Because the effluent at SW007 and SW005 is substantially identical, U. S. Steel has no obligation to sample from both of these locations.

2. SW007 is not safely accessible to U. S. Steel and/or MPCA. Monitoring and compliance locations should be safe and accessible to both the permittee and the permitting Agency. *See* EPA Permit Writers' Manual at Section 8.1.2.

3. No time is included in the compliance schedule to establish a monitoring point at this location. Time is needed to construct roads and infrastructure at the monitoring point and to obtain additional permits, including for the impact to wetlands.

4. The inclusion of a monitoring point at SW007 would require impacts to wetlands to establish and gain safe access. Before wetlands are impacted, avoidance measures must be considered, including sampling at an alternate location already required by the permit.

5. Monitoring requirements for Dissolved Oxygen are not required and not necessary to show compliance with any water quality standard.

Requested Change:

U. S. Steel requests that compliance monitoring point SW007 be removed. If MCPA declines to remove SW007, U. S. Steel requests time to establish a monitoring point at this location and that dissolved oxygen monitoring requirements are removed.

18. Issue: Proposed monitoring point SW001 (Sandy River Station 701) is arbitrary and capricious, and not appropriate.

Reference: Draft Permit, Pages 9, 13, 19;
Minn. R. 7001.1080 Subp. 5;
Minn. R. 7001.0150 Subp. 2.B;
Minn. R. 7053.0155;
EPA Permit Writers' Manual, Section 8.1.2;

U. S. Steel Position:

Minn. R. 7001.1080 Subp. 5 states "the commissioner shall establish appropriate monitoring and reporting of monitoring requirements to ensure compliance with permit limitations." Proposed monitoring at SW001 (Sandy River Station 701) is arbitrary, not appropriate, and/or impractical for the following reasons:

1. SW001 is not required for compliance as compliance is measured upstream at SW005. Historical data indicates that the majority of deep seepage from the tailings basin has daylighted prior to SW005. U. S. Steel is under no obligation to maintain historic data for comparative purposes. Because the location is historic, monitoring at this location could not be relevant to U. S. Steel's current compliance with permit limits or to determine water quality conditions, as required under Minn. Environmental Regulations. *See* Minn. R. 7001.1080 Subp. 5; Minn. R. 7001.0150 Subp. 2.B; Minn. R. 7053.0155. Because the requirement is not clearly related to determining compliance with permit limits or the effect of the effect of the discharge on groundwater uses, it should be removed.

2. SW001 is not representative of Minntac's discharges because it includes other contributors outside of Minntac. Monitoring points must be appropriate to ensure the discharger's compliance with permit limits. See Minn. R. 7001.1080 Subp. 5. The fact that SW001 includes other contributors outside of Minntac, this monitoring point cannot be appropriate to measure Minntac's compliance with permit limits, and should be removed.

3. Monitoring requirements for Dissolved Oxygen are not required and not necessary to show compliance with any water quality standard.

Requested Change:

Because the proposed monitoring point does not appropriately indicate whether the discharge from the Minntac facility is complying with permit limits, U. S. Steel requests that monitoring point SW001 and all associated requirements be removed.

19. Issue: Proposed monitoring point SW004 (Dark River at CH65) is arbitrary and capricious, inappropriate, and creates an unduly burdensome monitoring condition.

Reference: Draft Permit, Pages 9, 14, 20;
Draft Fact Sheet, Page 15;
Minn. R. 7001.1080 Subp. 5;
EPA Permit Writers' Manual, Section 8.1.2

U. S. Steel Position:

Minn. R. 7001.1080 Subp. 5 states "the commissioner shall establish appropriate monitoring and reporting of monitoring requirements to ensure compliance with permit limitations." Proposed monitoring at SW004 (Dark River at CH65) is arbitrary and capricious, and inappropriate, for the following reasons:

1. SW004 is not required for compliance. Compliance at the trout reach can be measured at SW003 (Dark River at CR668). As stated in the Draft Fact Sheet (Page 15), "Concentrations of key parameters at the CH65 location within the trout stream reach are fairly consistently about one-half of those observed at the CR668 sampling point during same-day sampling events; thus, establishing permit compliance limits at the CR668 sampling point to protect the downstream trout stream use of the Dark River is reasonable and defensible."

4. SW004 is not representative of Minntac's discharges because it includes other contributors outside of Minntac. Monitoring points must be appropriate to ensure the discharger's compliance with permit limits. See Minn. R. 7001.1080 Subp. 5. The fact that SW004 includes other contributors outside of Minntac, this monitoring point cannot be appropriate to measure Minntac's compliance with permit limits, and should be removed.

2. The Draft Fact Sheet and Draft Permit contradict one another relating to compliance at the trout reach. The Draft Fact Sheet states, "this location (CR668 crossing) is proposed as the downstream sampling point on the Dark River. Compliance monitoring requirements would also be developed at this location in order to ensure and evaluate compliance with water quality standards for those parameters that are

unique to the downstream portion of the Dark River that is a designated trout stream." U. S. Steel believes the inclusion of SW004 is an error based on the justification in the Draft Fact Sheet.

3. SW004 is located off Minntac's property and would take about 2.5 hours per sampling event per two persons to collect a sample, making monthly sampling at this site unduly burdensome. Monitoring and compliance locations should be safe and accessible to both the permitee and the permitting Agency. *See* EPA Permit Writers' Manual at Section 8.1.2. In determining the appropriate compliance points, the MPCA should consider whether the location is on the Minntac property and whether the location is accessible to both U. S. Steel and the permitting agency. Because SW004 is located off of Minntac's property and would require a substantial outlay of manpower and time to sample, it is not easily accessible to Minntac, and should be removed.

Requested Change:

U. S. Steel requests that compliance monitoring point SW004 and all associated requirements be removed.

20. Issue: Proposed monitoring point SW006 (Timber Creek) is arbitrary and capricious.

Reference: Draft Permit, Pages 9, 15, 21;
Minn. R. 7001.1080 Subp. 5;
Minn R. 7001.1060

U. S. Steel Position:

Minn. R. 7001.1080 Subp. 5 states "the commissioner shall establish appropriate monitoring and reporting of monitoring requirements to ensure compliance with permit limitations." Proposed monitoring at SW006 (Timber Creek) is arbitrary, not appropriate, and/or impractical for the following reasons:

1. SW006 and SW003 compliance monitoring points are substantially identical and characterize the same discharge. If the effluent from two outfalls is substantially identical, MPCA shall allow the discharger to sample from one of them instead of both. *See* Minn R. 7001.1060. Because the effluent at SW006 and SW003 is substantially identical, U. S. Steel has no obligation to sample from both of these locations.

2. SW006 does not account for all deep seepage and therefore does not characterize Minntac's effluent.

3. SW006 is not safely accessible to U. S. Steel and/or MPCA. Monitoring and compliance locations should be safe and accessible to both the permittee and the permitting Agency. *See* EPA Permit Writers' Manual at Section 8.1.2.

4. No time is included in the compliance schedule to establish a monitoring point at this location. Time is needed to construct roads and infrastructure at the monitoring point and to obtain additional permits, including for the impact to wetlands.

5. The inclusion of a monitoring point at SW006 would require impacts to wetlands to establish and gain safe access. Before wetlands are impacted, avoidance measures must be considered, including sampling at an alternate location already required by the permit.

6. Monitoring requirements for Dissolved Oxygen are not required and not necessary to show compliance with any water quality standard.

7. The proposed limits at SW006 are established per standards that do not have any existing or historical use.

8. There is no channelized flow in Timber Creek, making it impossible for Minntac to collect accurate flow data without making substantial changes to Timber Creek.

9. Once a Seepage Collection and Return System (SCRS) is installed on the west side of the tailings basin, there will be no impact from the Minntac tailings basin at SW006. The time required for U. S. Steel to complete permitting and construct the west side SCRS is likely similar to the time required to complete permitting and establish a monitoring point at SW006; therefore, it is unnecessary to include a compliance point at this location for this interim period.

Requested Change:

U. S. Steel requests that compliance monitoring point SW006 be removed.

21. Issue: Proposed monitoring point SW008 (Dark River near Basin) is arbitrary and capricious

Reference: Draft Permit, Pages 9, 15, 21
Minn. R. 7001.1080 Subp. 5;
Minn R. 7001.1060;
EPA Permit Writers' Manual at Section 8.1.2.

U. S. Steel Position:
Minn. R. 7001.1080 Subp. 5 states "the commissioner shall establish appropriate monitoring and reporting of monitoring requirements to ensure compliance with permit

limitations." Proposed monitoring at SW008 (Dark River near Basin) is arbitrary, not appropriate, and/or impractical for the following reasons:

1. SW008, SW003, and SD001 compliance monitoring points are substantially identical and characterize the same discharge. If the effluent from two outfalls is substantially identical, MPCA shall allow the discharger to sample from one of them instead of both. *See* Minn R. 7001.1060. Because the effluent at SW008, SW003, and SD001 is substantially identical, U. S. Steel has no obligation to sample from both of these locations.

2. Once a Seepage Collection and Return System (SCRS) is installed on the west side of the tailings basin, there will be no impact from the Minntac tailings basin at SW008. The time required for U. S. Steel to complete permitting and construct the west side SCRS is likely similar to the time required to complete permitting and establish a monitoring point at SW008; therefore, it is unnecessary to include a compliance point at this location for this interim period.

3. SW008 does not account for all deep seepage and therefore does not characterize Minntac's effluent.

4. SW008 is not safely accessible to U. S. Steel and/or MPCA. Monitoring and compliance locations should be safe and accessible to both the permittee and the permitting Agency. *See* EPA Permit Writers' Manual at Section 8.1.2.

5. No time is included in the compliance schedule to establish a monitoring point at this location. Time is needed to construct roads and infrastructure at the monitoring point and to obtain additional permits, including for the impact to wetlands.

6. The inclusion of a monitoring point at SW008 would require impacts to wetlands to establish and gain safe access. Before wetlands are impacted, avoidance measures must be considered, including sampling at an alternate location already required by the permit.

7. Monitoring requirements for Dissolved Oxygen are not required and not necessary to show compliance with any water quality standard.

8. The proposed limits at SW008 are established per standards that do not have any existing or historical use.

9. There is no channelized flow in Dark River near this location, making it impossible for Minntac to collect accurate flow data without making substantial changes to Dark River at this location.

Requested Change:

U. S. Steel requests that compliance monitoring point SW008 be removed.

22. Issue: Proposed monitoring point SW005 (Little Sandy Lake inlet) is substantially identical to SW007 (Admiral Lake).

Reference: Draft Permit, Pages 9, 14, 15, 20, 21;
Minn. R. 7001.1080 Subp. 5;
Minn. R. 7001.1060 Subp. 1

U. S. Steel Position:

Minn. R. 7001.1080 Subp. 5 states "the commissioner shall establish appropriate monitoring and reporting of monitoring requirements to ensure compliance with permit limitations." U. S. Steel recommends removing SW007 from the permit (See Comment 17); however, if SW007 is kept as a compliance point, it is substantially identical to SW005. Minn. R. 7001.1060 Subp. 1 specifies that if the effluent from two outfalls is substantially identical, then MPCA shall allow sampling from only one of the outfalls to represent the discharge from both outfalls. Because SW007 and SW005 are substantively identical, if SW007 is retained in the permit, SW005 should be removed.

Requested Change:

U. S. Steel requests that compliance point SW005 be removed if MPCA does not remove SW007 from the permit.

23. Issue: Interim effluent limits are not required and MPCA has no basis for its calculation of the proposed interim limits.

Reference: Draft Permit, Pages 11–16;
Fact Sheet, Pages 28–30;
40 CFR § 122.47(a)(3);
Minn. R. 7001.0150;
Minn. R. 7001.0170;
327 IAC 5-3.5-8

U. S. Steel Position:

For compliance schedules, interim "requirements" and compliance dates are required if the schedule is longer than one year, but the federal rules do not specifiy that interim "limits" are required. 40 CFR § 122.47(a)(3). Although according to Minn. R. 7001.0150 interim limits are permitted where appropriate, the interim limits proposed in this permit are not appropriate for the foregoing reasons:

This permit's interim limits may cause U. S. Steel to violate the anti-backsliding rules. U. S. Steel is concerned that it may exceed the proposed limits for reasons outside its control (contribution from other dischargers, no treatment has yet been proven, etc.) and would then later need to petition for a major modification to the permit. *See* Minn. R. 7001.0170. In particular, no technology has been installed to control the discharge, and compliance with concentration limits would be dependent on conditions outside of U. S. Steel's control, including the impact from other dischargers and low-flow conditions. Corrective actions would be unknown if a violation of interim limits occurred. In order to prevent the need to reopen the permit at a later date, these interim limits should be removed.

Further, the method that MPCA has used to calculate its proposed interim limits is inappropriate and has no basis in the regulations. The purpose of interim limits is to insure that levels of the regulated parameters do not exceed current levels. To this end, when interim limits are appropriate, they are usually set at the highest measured level of the parameter. Many other jurisdictions endorse this calculation method. *See, e.g.*, 327 IAC 5-3.5-8 (stating that interim limits for mercury shall be set at the "highest daily value for mercury" and that this highest value will become the interim limit). In this case, MPCA has calculated interim limits at the 95th percentile of the regulated pollutants, meaning that the Minntac Facility will likely be exceeding the interim limits at least 5% of the time. This calculation has no basis in any law or regulation, and clearly frustrates the purpose of interim limits.

Requested Change:

U. S. Steel requests all interim limits contained in the permit as well as conditions related to calculation of interim limits after 1 year of sampling be removed and replaced with interim progress reports and monitoring only during the course of the compliance schedule.

In the event that interim limits are not removed, U. S. Steel requests that a provision stating that, if the interim limits are exceeded for reasons outside U. S. Steel's control, this exceedance would not be considered a permit violation.

24. Issue: Final effluent limits are arbitrary and capricious.

Reference: Draft Permit, Pages 16–23

U. S. Steel Position:

Final effluent limits were established at SW003, SW004, SW005, SW006, SW007, and SW008 without following proper procedures to determine if there is a reasonable potential to exceed water quality standards. Limited data is available for SW003, SW004, and SW005, and no data is available at SW006, SW007, and SW008 as these monitoring points have not yet been established.

Requested Change:

U. S. Steel requests that all compliance points include 'monitor only' conditions for the permit term, upon which enough representative data will be collected to determine if water quality standards are likely to be exceeded and final effluent limits are necessary.

25. **Issue: It is inappropriate to apply Class 3C and 4A water quality standards to portions of Dark River and Timber Creek where no use exists (SD001, SW006 and SW008).**

Reference: Draft Permit, Pages 9, 13, 15, 19, 21;
Minn. R. 7050.0430;
40 CFR § 131.10(g)(3);
40 CFR § 131.10(g)(2&5)

U. S. Steel Position:

Class 3C (industrial consumption) and Class 4A (agricultural irrigation) designated beneficial uses currently in place for the upper Dark River and Timber Creek have not existed, do not exist and are not reasonably expected to exist in the future. Further, these waters are not specifically listed in Minnesota Rules for the 3C and 4A beneficial use classifications, but rather are classified as such by "default," since they are not specifically listed and therefore are classified as per Minn. R. 7050.0430.

In addition, property ownership prevents access to the waterbodies in order to withdraw from it and use it for industrial purposes (40 CFR § 131.10(g)(3)), there is insufficient flow in Timber Creek and upper Dark River during all periods of the year to facilitate industrial uses (40 CFR § 131.10(g)(2&5)), and no reliable or cost effective means to treat the water to the Class 3C and 4A water quality standards in Timber Creek and upper Dark River has been identified.

For the foregoing reasons, U. S. Steel has filed a Use Attainability Analysis of the Upper Dark River and Timber Creek to petition MPCA to remove the associated 3C and 4A uses from these waterbodies.

Requested Change:

U. S. Steel requests that all Class 3C and 4A water quality standards be removed for compliance monitoring points on the upper Dark River and Timber Creek (SD001, SW006, and SW008); or, alternatively, language is provided in the permit to modify these limits if a UAA is approved by MPCA without opening the permit to a major modification. U. S. Steel requests the following parameters be removed:

Water Use Classification	Water Quality Parameter	Water Quality Standard
Class 3C	Hardness	500 mg/L
Class 4A	Total Dissolved Solids	700 mg/L
Class 4A	Specific Conductance @ 25°C	1,000 µmhos/cm
Class 4A	Bicarbonates	5 meq/L as HCO_3

26. Issue: The Class 4B standard for sulfate is inappropriate because Minnesota has a narrative standard that exists.

Reference: Draft Permit, Pages 18, 19, 21;
Minn R. 7050.0224, Subp. 3

U. S. Steel Position:

MPCA has imposed a sulfate effluent limit of 1,000 mg/L at monitoring points SD001, SW003, SW006 and SW008 based on interpretation of the following narrative statements found in Minn R. 7050.0224, subp. 3:

> The quality of Class 4B waters of the state shall be such as to permit their use by livestock and wildlife without inhibition or injurious effects
>
> ....
>
> Additional selective limits may be imposed for any specific waters of the state as needed.

The quality of Class 4B waters are outlined in Minn. R. 7050.0224, Subp. 3 to permit the water bodies use "by livestock and wildlife without inhibition or injurious effects." Based on water quality monitoring conducted by U. S. Steel, lands adjacent to Timber Creek and the upper Dark River are not currently used for agricultural livestock purposes and will likely not be used for such purposes in the future based on the current land ownership and use.

However, these lands have conditions conducive to the support of wildlife typical to northeastern Minnesota. Stands of mix spruce/fir, birch and black spruce are present in the watersheds near the tailings basin, with various areas containing abundant aspen and pine stands throughout the watershed. These diverse upland and lowland habitats provide likely habitat for a variety of species that have been known to occur in northeastern Minnesota. Canada geese, pelicans, cormorants and other waterfowl are common in and around the Minntac tailings basin. Beaver activity is also prevalent in the area. Wolves, moose, black bear, bald eagles, ravens, and deer are frequent visitors to the Minntac tailings basin and adjacent lands.

Due to the presence of wildlife and the supporting habitat conditions discussed above, Timber Creek and the upper Dark River supports the wildlife that is present in the area and suggests that the various wildlife species common to this area are acclimated to this environment. When applying the narrative water quality standards, consideration must be made that the only use in the Timber Creek and Dark River watershed is for acclimated wildlife. Wildlife is acclimated to this source and able to seek out other nearby water sources as necessary. Sulfate levels in Dark River have been relatively high over the past two decades and there have been no detrimental effects observed on the resident wildlife population.

When considering a numeric standard for sulfate based on a narrative standard, MPCA must consider site-specific circumstances at Minntac rather than a generic recommendation until the time a numeric standard is established and goes through rulemaking by MPCA.

Requested Change:

U. S. Steel requests that the numeric limit of 1,000 mg/L for sulfate be removed from the permit at SD001, SW003, SW006, and SW008, as well as anywhere else they may be imposed.

Alternatively, U. S. Steel requests that the numeric limit of 1,000 mg/L for sulfate be changed to a narrative description. A narrative limit would more accurately reflect the regulatory standard described in Minn. R. 7050.0224 Subp. 3.

27. Issue: Compliance with effluent limits for Oil and Grease at SD001 is arbitrary and capricious.

Reference: Draft Permit, Page 12;
40 CFR § 440.10

U. S. Steel Position:

There is no basis for the inclusion of oil and grease, as there is no applicable water quality standard or categorical TBEL applicable to the iron ore mining subcategory (40 CFR § 440.10).

Requested Change:

U. S. Steel requests that all oil and grease limits and associated monitoring is removed from SD001.

28. Issue: WET testing frequency is overly burdensome and not appropriate based on preliminary test results.

Reference: Draft Permit, Pages 33–35;
EPA Permit Writer's Manual Section 6.5.3

U. S. Steel Position:

According to the EPA Permit Writer's Manual Section 6.5.3, comprehensive WET Testing frequency is only required when the discharge has the reasonable potential to exceed water quality standards. All WET Testing completed to date has resulted in 100% passing rate; therefore, no reasonable potential to exceed standards exists.

Requested Change:

U. S. Steel requests that the WET testing frequency is reduced to once per permit cycle.

29. Issue: Proposed groundwater monitoring locations are arbitrary, not appropriate, redundant, and impractical.

Reference: Draft Permit, Pages 9, 11, 16, 17;
Minn. R. 7001.1060 Subp.1

U. S. Steel Position:

Groundwater monitoring points located on the west side of the tailings basin (GW006, GW007, and GW008) are representative of the same discharge and it is unnecessary to include all in the permit. Minn. R. 7001.1060 Subp. 1 specifies that if the effluent from two outfalls is substantially identical, then MPCA shall allow sampling from only one of the outfalls to represent the discharge from both outfalls. Because groundwater monitoring wells GW006, GW007, and GW008 are all substantively identical, MPCA should remove one or more of these monitoring points.

Requested Change:

U. S. Steel requests the removal of monitoring requirements from one or more of groundwater monitoring wells GW006, GW007, or GW008.

30. Issue: Proposed groundwater sampling parameters are not required, are overly burdensome, and are arbitrary and capricious.

Reference: Draft Permit, Pages 11, 16, 17

U. S. Steel Position:

There is no water quality standard for dissolved oxygen, nor is the measurement of dissolved oxygen in groundwater necessary to show compliance with any other parameter; therefore, it is overly burdensome and unnecessary to require monitoring for dissolved oxygen in all groundwater locations.

In addition, the measurement of iron and manganese in the groundwater around Minntac's tailings basin is not representative of Minntac's discharge as explained in the Draft Fact Sheet. Therefore, monitoring requirements are unnecessary and inappropriate.

Requested Change:

U. S. Steel requests that MPCA remove all parameters for which a groundwater standard does not exist or those which U. S. Steel has shown have no reasonable potential to exceed the groundwater standards. In addition, U. S. Steel requests the removal of all iron and manganese monitoring requirements as they are not representative of Minntac's discharge.

31. Issue: Continued monitoring at groundwater compliance monitoring point GW014 is arbitrary and capricious and unnecessary.

Reference: Draft Permit, Pages 11, 12, 17

U. S. Steel Position:

Two years of quarterly monitoring has indicated that groundwater is at or near background levels at this location. As such, continued monitoring at this point is redundant, and would use valuable time and manpower that could be better spent in pursuit of other compliance requirements.

Requested Change:

U. S. Steel requests that monitoring at GW014 be changed to a frequency of once per year and that monitored parameters be limited to those associated with Minnesota state groundwater standards.

32. Issue: The Proposed groundwater compliance monitoring point GW011 is arbitrary and capricious.

Reference: Draft Permit, Pages 9, 11, 16, 41;
EPA Permit Writers' Manual at Section 8.1.2.

U. S. Steel Position:

1. GW011 is not safely accessible to U. S. Steel and/or MPCA. Monitoring and compliance locations should be safe and accessible to both the permittee and the permitting Agency. *See* EPA Permit Writers' Manual at Section 8.1.2.

2. No time is included in the compliance schedule to establish a monitoring point at this location. Because the permit writer failed to consider if the monitoring location is accessible to the permittee and the permitting authority, in order to monitor at the proposed locations, safe access would need to be created via the construction of roads and other infrastructure.

3. The inclusion of a monitoring point at GW011 would require impacts to wetlands to establish and gain safe access. Given the proposed location of GW011, it is unavoidable that wetlands would be directly or indirectly impacted through the construction of these roads and infrastructure. Wetland sequencing requires that the following steps be considered in order to authorize impact to wetlands: avoidance, minimization, etc. It is possible to avoid many of the wetland impacts that would result from the implementation of proposed monitoring points through the use of fewer monitoring points that would still be representative of Minntac's discharge.

Requested Change:

U. S. Steel requests that compliance monitoring point GW011 be removed from the permit.

33. Issue: Installation and monitoring requirements for specific station GW011 are unrealistic, arbitrary and capricious.

Reference: Draft Permit, Page 41, Section 2

U. S. Steel Position:

1. GW011 is not safely accessible to U. S. Steel and/or MPCA. Monitoring and compliance locations should be safe and accessible to both the permittee and the permitting Agency. *See* EPA Permit Writers' Manual at Section 8.1.2.

2. There is not sufficient time to establish safe access, acquire all necessary permits and install the nested well within 180 days after permit issuance.

3. The shallow well of the GW011 nested cluster would be representative of surface water and therefore not representative of ground water.

Requested Change:

U. S. Steel requests that in section 2.2, the last sentence be changed to "Install ground water monitoring well no later than 12 months after receipt of all permits".
U. S. Steel requests that the shallow well of the nested GW011 cluster be removed from section 2.5 as a candidate for monitoring compliance since it is representative of surface water and not groundwater.

34. Issue: Investigation work plan requirements are redundant and overly burdensome.

Reference: Draft Permit, Page 25, Section 1.6

U. S. Steel Position:

Many of the requirements in section 1.6 are already part of the permit requirements.

Requested Change:

U. S. Steel requests that all permit requirements, compliance points and related compliance parameters relative to groundwater seepage be removed until factual conclusions on groundwater flow and impact can be investigated.

35. Issue: The inclusion of requirements at WS002, WS003, WS004 and WS005 is inappropriate, arbitrary and capricious.

Reference: Draft Permit, Pages 9, 10, 16, 21, 22, 44–46

U. S. Steel Position:

There is no basis for monitoring or compliance with limits for internal waste streams into the tailings basin at WS002, WS003, WS004, and WS005. U. S. Steel is required to achieve compliance with water quality standards at the downstream point at which the standards apply. Specifically, there is no basis for the 'no net increase' in sulfate or hardness from the Line 3 Scrubber Treatment System.

In addition, the 'no net increase' requirement which was contained in the June 9, 2011 SOC was resolved with an alternate water management strategy which consists of replacing makeup water from Mt. Iron Pit with makeup water from the No. 6 sump in order to offset the increase in sulfate and hardness caused by the Line 3 Scrubber Treatment System.

Requested Change:

U. S. Steel requests that monitoring points WS002, WS003, WS004 and WS005, as well as requirements in Chapter 12, Section 2, Pages 44–46, and all other associated

requirements applicable to WS002, WS003, WS004, and WS005 be removed from the permit.

36. Issue: WS006 and WS007 are arbitrary and capricious.

Reference: Draft Permit, Pages 10, 16, 22;
Minn. R. 7001.1080 Subp. 5;
Minn. R. 7001.0150 Subp. 2.B;
Minn. R. 7053.0155

U. S. Steel Position:

Monitoring points must be appropriate to ensure compliance with permit limits. *See* Minn. R. 7001.1080 Subp. 5. Additionally, the monitoring requirements must be of a type, interval and frequency sufficient to yield representative data. *See* Minn. R. 7001.0150 Subp. 2.B & Minn. R. 7053.0155. There is no legal reason to test here as WS006 and WS007 were established to monitor toxicity, which has now been replaced with downstream WET testing. Further, Amine testing at these waste streams has been removed, and there is no reason to monitor other parameters. Finally, with the installation of the new pumping station, WS006 and WS007 will no longer exist. Thus, monitoring at WS006 and WS007 would be inappropriate and would not yield any representative data.

Requested Change:

U. S. Steel requests that WS006 and WS007 be removed from the permit.

37. Issue: The compliance monitoring parameters for WS008 (waste treatment plant effluent) are overly burdensome and not appropriate.

Reference: Draft Permit, Pages 10, 22, 23;
Minn R. 7053.0215 Subp. 1

U. S. Steel Position:

According to Minn R. 7053.0215 Subp. 1, fecal coliform monitoring is only required from April to October, except that where the effluent is discharged 25 miles or less upstream of a water intake supplying a potable water system, which is not the case at the Minntac Facility. The current permit requires monitoring of this parameter year-round, in violation of Minnesota Regulations.

Requested Change:

U. S. Steel requests that the WS008 fecal coliform and total residual chlorine effective monitoring period be changed from January to December to April through October.

38. Issue: The permit should allow for anticipated changes to be made without a major modification.

Reference: EPA NPDES Permit Writer's Manual, Chapter 5

U. S. Steel Position:

It is anticipated that changes to the permit will need to be made during the next permit term, and as such, language should be included so that a major modification is not required to make changes to the permit. According to Chapter 5 of the EPA NPDES Permit Writer's Manual, permit writers may include provisions for different possible scenarios, provided those scenarios are sufficiently definite to write into the permit.

Requested Change:

U. S. Steel request that the permit include language that allows SD001 to be eliminated when the Dark River SCRS is complete and operational.

U. S. Steel requests that the permit include language that allows the limits to change at SD001 and SW003 (and any other compliance monitoring point on the west side of the basin) upon approval of UAA.

U. S. Steel requests that the permit include language that allows the limits to change at SW005 (and any other compliance monitoring point on the east side of the basin) upon approval of a UAA or site specific standard.

U. S. Steel requests that the permit include language that allows the limits to change upon the completion of rulemaking by MPCA for parameters including the sulfate standard for the protection of wild rice waters and any other parameter.

39. Issue: Stormwater Pollution Prevention Plan requirements are unduly burdensome.

Reference: Draft Permit, Chapter 8, Pages 35–40

U. S. Steel Position:

Minntac already maintains a Stormwater Pollution Prevention Plan (SWPPP) which sufficiently protects surface and groundwater quality from stormwater pollution.

Requested Change:

5.1 "The Permittee must develop and implement an inspection schedule that includes a minimum of one bimonthly facility inspection ~~per calendar month~~ during non-frozen conditions (March through October)."

40. Issue: Mercury Minimization Plan requirement is inappropriate, unduly burdensome, and unnecessary.

Reference: Draft Permit, Chapter 6, Pages 32–33;

U. S. Steel Position:

The requirement that Minntac complete and submit a Mercury Minimization plan is redundant and should be removed from this draft. As a result of the Mercury TMDL process, in September of this year, MPCA finalized the Mercury Air Emission Reduction and Reporting Requirements rule. This rule is applicable to taconite facilities, including Minntac, and requires that facilities complete and submit a plan to reduce mercury emissions. To require another plan to reduce mercury is redundant.

Requested Change:

U. S. Steel requests that Chapter 6 be removed from the Draft Permit.

41. Issue: The Dike Seepage Survey and Survey Report is unduly burdensome and unnecessary.

Reference: Draft Permit, Section 5.1, Page 31

U. S. Steel Position:

U. S. Steel is required by the Minnesota Department of Natural Resources (DNR) to complete a Tailings Basin Dike Seepage Survey and Report. Requirements to complete a second survey which contains the same information would be unduly burdensome and unnecessary.

Requested Change:

U. S. Steel requests that Section 5.1 be removed from the Draft Permit. A copy of the required DNR survey can be made available to MPCA upon request.

42. Issue: Dissolved oxygen monitoring is overly burdensome, arbitrary, capricious and not required

Reference: Draft Permit, Pages 11–23

U. S. Steel Position:

There are no regulatory requirements to monitor dissolved oxygen. Dissolved oxygen readings are not needed. If dissolved oxygen is determined to be beneficial, it can be added to the investigation work plan.

Requested Change:

U. S. Steel requests that testing for and monitoring dissolved oxygen be removed from the permit.

43. Issue: Permit requirements are based on arbitrary and capricious presumptions.

Reference: Draft Fact Sheet, Page 12

U. S. Steel Position:

Permit requirements must be based on real data and hard facts, rather than presumptions, otherwise they are arbitrary and capricious. Under the Site Geology and Hydrology section on page 12, it cannot be 'presumed' that "groundwater flow is away from the basin to the east, north and west and that after more than 40 years of operation, essentially all groundwater ….is tailings-impacted." Without backup data, basing permit requirements on such a presumption is the very definition of arbitrary and capricious.

Requested Change:

U. S. Steel requests that all permit requirements, compliance points and related compliance parameters relative to groundwater seepage be removed until factual conclusions on groundwater flow and impact be investigated.

44. Issue: Permit requirements are based off of inappropriate and questionable data sources.

Reference: Draft Fact Sheet, Page 1

U. S. Steel Position:

Under the 'Site Geology and Hydrology' section on page 12, air photos are used to determine that there are other areas of shallow seepage. Air photos are unreliable due to the vast area of wetlands, beaver activity and ever-changing geological and hydrological conditions. Without backup data, basing permit requirements on unverified aerial photos is the very definition of arbitrary and capricious, and these photos should be removed and replaced with factual conclusions.

Requested Change:

U. S. Steel requests that all permit requirements, compliance points and related compliance parameters relative to groundwater seepage be removed until factual conclusions on groundwater flow and impact be investigated.

45. **Issue: The requirement that all waterbodies that originate within one mile of the tailings basin as shown on the Minnesota Public waters inventory (PWI) should be monitored for water quality standards is arbitrary and capricious.**

Reference: Draft Fact Sheet, Page 13;
7001.1060 Subp. 1;
EPA Permit Writers' Manual at Section 8.1.2.

U. S. Steel Position:

MPCA has provided no factual or legal basis for its requirement that U. S. Steel monitor all streams and lakes that originate within one mile of the tailings basin for compliance with water quality standards and criteria. This requirement has resulted in the inclusion of redundant and inaccessible monitoring stations in the draft permit.

For example, the discharges at monitoring points SW006 and SW008 are substantively identical to that at existing compliance point SW003. As stated previously, Minn. R. 7001.1060 Subp. 1 specifies that if the effluent from two outfalls is substantially identical, then MPCA shall allow sampling from only one of the outfalls to represent the discharge from both outfalls. Thus, MPCA's requirement that U. S. Steel construct SW006 and SW008 and monitor discharge at these locations is inappropriate.

Further, it is not feasible for U. S. Steel to construct and monitor these compliance points. Both of these locations are located in undeveloped wetland areas outside the tailings basin perimeter dike, and are functionally inaccessible to U. S. Steel. Monitoring and compliance locations should be safe and accessible to both the permitee and the permitting Agency. *See* EPA Permit Writers' Manual at Section 8.1.2.

Requested Change:

U. S. Steel requests that monitoring requirements at SW006 and SW008 be removed and that SW003 be used to represent this discharge.

Global Comments

46. **Issue: Discharges (S) to groundwater should not be regulated as surface water under SDS Rules.**

Reference: Draft Fact Sheet, Pages 6, 14–16

U. S. Steel Position:

U. S. Steel agrees with MPCA's conclusion concerning the exclusion of groundwater, including groundwater drained through subsurface drainage systems from the definition of "waters of the United States" under the CWA. The consequence, as MPCA correctly determined, is that discharges to groundwater cannot be regulated by the Minntac

NPDES permit. Instead, discharges from the tailings basin to groundwater are properly regulated by the state's SDS rules.

However, Surface Water Monitoring Stations into which deep seepage from the tailings basin is purportedly emerging have water quality standards, narrative criteria, and monthly monitoring requirements assigned to them. MPCA cannot regulate groundwater through the NPDES permit directly (as it recognizes) or *indirectly*, as it is doing with the surface water monitoring locations. For example, MPCA proposes compliance monitoring for Timber Creek because, among other reasons, "it is likely to be receiving emergent groundwater that originated at the tailings basin as a portion of its baseflow." Fact Sheet p. 14.

Requested Change:

U. S. Steel requests all limits and monthly monitoring requirements be removed from all Surface Water Stations and replaced with the requirement to meet water quality standards as *goals* in the permit. U. S. Steel's remediation strategies for the site focus on a goal of attaining water quality standards. Therefore, a sensible course for the NPDES permit is to reference those remediation strategies and their goals. However, because the in-stream levels reflect both groundwater and surface water inputs, U. S. Steel does not support putting the water quality standards into the permit as enforceable requirements.

47. Issue: A sulfate standard of 10mg/L should not be applied to a waterbody that has not been formally designated as wild rice waters.

Reference: Draft Permit, Page 21;
Draft Fact Sheet, Page 16;
For others, *see* Appendix

U. S. Steel Position:

U. S. Steel requests that the proposed Class 4A sulfate standard for wild rice (10 mg/L) for Admiral Lake, Sand River, or Little Sandy Lake and Sandy Lake (the "Twin Lakes") removed. The Twin Lakes have never been designated as waters used for the production of wild rice ("WUFPOWR"), and MPCA has no legal justification for deeming them to be WUFPOWR. U. S. Steel's objections to the classification of the Twin Lakes as a WUFPOWR are summarized below, and are further set out in Appendix A, attached to this document:

i. The legislature's stated purpose in enacting the law requiring a wild rice/sulfate study was that the study would be completed before regulated parties would have new requirements imposed based on the sulfate standards. MPCA's imposition in this permit of stringent sulfate limits on Admiral Lake, Sand River, and the Twin Lakes prior to completion of the study is premature and contravenes the legislature's intent.

ii. Additionally, MPCA's Draft Recommendation proposing that Twin Lakes is a WUFPOWR and its consequent application of the resulting strict permit limits on U. S. Steel in this permit, when that standard has never been formally applied to specific waters under the regulations, violates U. S. Steel's right to due process.

iii. Under the Clean Water Act, uses are designated for waters, and then criteria are set to protect those assigned uses. MPCA has not formally designated any waters as "wild rice waters," in its use designation regulation. In the absence of such a use designation, the criterion of 10 mg/L sulfate established to support that use cannot be applied.

iv. Defining waters as WUFPOWR in a Draft Recommendation, based on wild rice protection, and applying permit limits based on this designation are actions by MPCA that have substantial practical impacts. Therefore, MPCA should follow a standard rulemaking process before taking these actions.

v. Under the Clean Water Act and its regulations, designated uses need to be "attainable." MPCA has made no showing that the wild rice designated use is attainable for Twin Lakes, to which it has applied its wild rice/sulfate standards.

vi. MPCA's Draft Recommendation that the Twin Lakes are WUFPOWR, based on protecting wild rice, has resulted in overly stringent permit limits. If these limits are built into the final permit, it will be very difficult to ever change them, due to antibacksliding requirements. That is the case even if the sulfate study shows that sulfate standards should be much less stringent than MPCA's current level.

vii. Because MPCA has placed such stringent limits into this permit, based on its Draft Recommendation that the Twin Lakes are WUFPOWR, any increase in those limits will likely be subject to antidegradation review. That is the case even if the sulfate study has shown that the correct sulfate limits should be much less stringent than the levels that were put in the permit.

Requested Change:

U. S. Steel requests that the proposed Class 4A sulfate standard for wild rice (10 mg/L) be removed at SW005 and SW007. These waterbodies have never been designated as waters used for the production of wild rice, and MPCA's criteria for deeming Twin Lakes, and other waterbodies, to be WUFPOWR based on the presence of certain numbers of wild rice plants has no basis in the regulations of these criteria.

In the event that MPCA does apply a Class 4A sulfate standard to Twin Lakes, U. S. Steel requests that the MPCA apply a site specific standard to the waterbody based on site specific conditions. In addition, any sulfate limit included in the permit for the protection of WUFPOWR should be applied only during "periods when the rice may be susceptible to damage by high sulfate levels," which has been recommended as April – September.

48. Issue: Compliance Schedule timeline is impractical and not designed to insure compliance in the shortest reasonable period of time.

Reference: Draft Permit, Chapter 2, Pages 24–28;
Draft Fact Sheet, Pages 31–37;
Minn. R. 7001.0150 Subp. 2A

U. S. Steel Position:

Minn. R. 7001.0150 Subp. 2A states that compliance schedules shall "require compliance in the shortest reasonable period of time." The compliance schedule outlined in this permit, however, is unreasonably short because its schedule does not take into account the time required to obtain required permits, does not include or reference ongoing compliance projects, and includes redundant and improper monitoring and reporting obligations, as described in the above-referenced Comments.

Requested Change:

U. S. Steel requests that, once the above-referenced Comments have been resolved, the compliance schedule be revised as well to accommodate these new permit conditions.